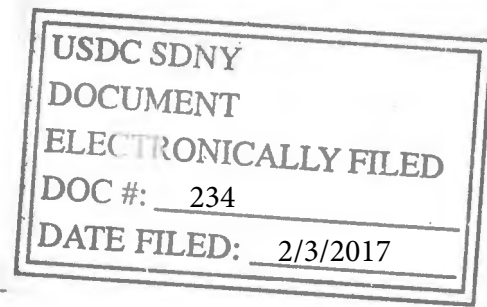


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
VICTOR KOLTUN,

Plaintiff,

-against-

JEFFREY BERRY, et al.,

Defendants.
-----X

13 Civ. 1612 (PAC) (JCF)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se plaintiff Victor Koltun brings this action pursuant to 42 U.S.C. §§ 1983 and 1985(3) for alleged violations of his constitutional rights in the course of his arrest and criminal prosecution for murder in New York state court. He names as defendants his former court-appointed attorneys, officers of the City of Newburgh Police Department and the New York State Police, the Orange County Attorney, employees of the Orange County District Attorney's Office and the Orange County Sheriff's Office, government officials of the City of Newburgh, and three New York state court judges. All defendants moved to dismiss.

This is Koltun's second attempt to allege constitutional violations in connection with his arrest and prosecution. On March 21, 2014, the Court adopted three Reports and Recommendations ("R&Rs") issued by Magistrate Judge James C. Francis IV recommending dismissal of Koltun's initial complaint, with leave to amend only as to his false arrest and associated supervisory liability claims. By letter dated October 19, 2015, Koltun requested appointment of counsel. On November 10, 2015, Magistrate Judge Francis denied Koltun's request. Koltun's amended complaint was docketed on January 5, 2016.

On November 7, 2016, Magistrate Judge Francis issued a R&R that the defendants' motions to dismiss the amended complaint be granted. On November 21, 2016, the Court received Koltun's objections to the R&R. On November 28, 2016, Defendant Glen Plotsky responded to Koltun's objections. On December 9, 2016, the Court received a letter from Koltun, objecting to Plotsky's response.

The Court may "accept, reject, or modify, in whole or in part, the findings or recommendations by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If a party objects to an R&R, the Court must review those objections *de novo*. Fed. R. Civ. P. 72(b)(3). However, "to the extent . . . that the party makes only conclusory or general arguments, or simply reiterates the original argument, the Court will review the [R&R] strictly for clear error." *DiPilato v. 7-Eleven, Inc.*, 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009). "The objections of parties appearing *pro se* are generally accorded leniency and should be construed to raise the strongest arguments that they suggest." *Id.* at 340 (internal quotation marks omitted). "Nonetheless, even a *pro se* party's objections to a Report & Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument." *Id.*

Construing Koltun's objections to raise the strongest argument they suggest, Koltun appears to argue that Magistrate Judge Francis is biased and partial. The basis for this argument is Koltun's general disagreement with the conclusions of the R&R. As the Court previously explained in adopting Magistrate Judge Francis's R&Rs dismissing the initial complaint, mere disagreement "provides no basis to challenge the distinguished Magistrate Judge's recommendations." Dkt. 125. Further, Magistrate Judge Francis's order denying Koltun's application for the appointment of counsel does not suggest any partiality or bias, or provide any

basis to challenge the R&R. The Court agrees with Magistrate Judge Francis that Koltun has not shown there is some likelihood of merit to his case, and so denial of the application was appropriate. *See Johnston v. Genessee Cnty. Sheriff Maha*, 606 F.3d 39, 41 (2d Cir. 2010).

At best, Koltun's remaining conclusory objections reiterate arguments that Magistrate Judge Francis considered and rejected. The Court therefore reviews the November 7, 2016 R&R for clear error. Finding none, the Court adopts the R&R in full.

Accordingly, the defendants' motions to dismiss are granted. The amended complaint is dismissed, with prejudice. The Clerk of Court is directed to enter judgment and close this case.

Dated: New York, New York
February 3, 2017

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copy Mailed by Chambers To:

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